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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,558	03/17/2004	Tracy Alan Metzger	2055997-5002US	3723
23345 7590 06/04/2012 MCGUIREWOODS, LLP 1750 TYSONS BLVD SUITE 1800 MCLEAN, VA 22102				
EXAMINER				
SHEIKH, ASFAND M				
ART UNIT		PAPER NUMBER		
3627				
MAIL DATE		DELIVERY MODE		
06/04/2012		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# **Advisory Action** **Before the Filing of an Appeal Brief**

**Application No.**  
10/802,558

**Applicant(s)**  
METZGER, TRACY ALAN

**Examiner**  
ASFAND SHEIKH

**Art Unit**  
3627

*--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

THE REPLY FILED 21 May 2012 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

## **NO NOTICE OF APPEAL FILED**

1. ☒ The reply was filed after a final rejection. No Notice of Appeal has been filed. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114 if this is a utility or plant application. Note that RCEs are not permitted in design applications. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action; or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
c) ☐ A prior Advisory Action was mailed more than 3 months after the mailing date of the final rejection in response to a first after-final reply filed within 2 months of the mailing date of the final rejection. The current period for reply expires \_\_\_\_\_ months from the mailing date of the prior Advisory Action or SIX MONTHS from the mailing date of the final rejection, whichever is earlier.

*Examiner Note: If box 1 is checked, check either box (a), (b) or (c). ONLY CHECK BOX (b) WHEN THIS ADVISORY ACTION IS THE FIRST RESPONSE TO APPLICANT'S FIRST AFTER-FINAL REPLY WHICH WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. ONLY CHECK BOX (c) IN THE LIMITED SITUATION SET FORTH UNDER BOX (c). See MPEP 706.07(f).*  
Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) or (c) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## **NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

## **AMENDMENTS**

3. ☐ The proposed amendments filed after a final rejection, but prior to the date of filing a brief, will not be entered because:  
a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
b) ☐ They raise the issue of new matter (see NOTE below);  
c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  
NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): (a) ☐ will not be entered, or (b) ☐ will be entered, and an explanation of how the new or amended claims would be rejected is provided below or appended.

## **AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing the Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or applicant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

## **REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_

## **STATUS OF CLAIMS**

14. The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_  
Claim(s) objected to: \_\_\_\_\_  
Claim(s) rejected: 1-3, 5-9, 11-12 and 14-28.  
Claim(s) withdrawn from consideration: \_\_\_\_\_

/Asfand Sheikh/  
Primary Examiner, Art Unit 3627

Continuation of 11. does NOT place the application in condition for allowance because: The applicant argues the feature "is configured to provide a change due flag to record consumer identifying information to capture the amount of change due to consumer at the point of sale."

The examiner notes Stern, a teaching reference, was shown to teach wherein a device is configured to provide notification (e.g. flag) identifying information to capture the amount of compensation due to a consumer (see at least, [0057]), which as reasonably constructed reads on applicant's argued feature, "is configured to provide a change due flag to record consumer identifying information to capture amount of change due to consumer." The examiner notes Stern's features are not related to a monetary value, but the concept of identifying an amount of compensation due to a consumer is noted to be taught. Brown's disclosure relies upon transacting at the point of sale which includes recording of all transactions that take place (see at least, abstract) which would read on knowing of an amount due. The examiner notes one could take the teaching concept of compensating a consumer based on a flag and apply it to the teachings of Brown's monetary transaction; therefore this argument is not persuasive.

With respect to the argument regarding Examiner's Official Notice, the examiner notes the following: "To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art" (see MPEP 2144.03 C). The examiner notes the applicant has failed to state why the noticed fact is not considered to be common knowledge or well-known in the art. This is an inadequate traversal.